
SENATE BILL No. 383

DIGEST OF INTRODUCED BILL

Citations Affected: IC 15-7-7; IC 15-7-7.5.

Synopsis: Equipment retailers. Adds "outdoor power equipment" suppliers and retailers to farm and industrial machinery suppliers and retailers currently governed by the inventory repurchase provisions of agricultural law. Provides procedures for determining the repurchase price paid by a supplier to a retailer. Requires a supplier to supply notice to a retailer before terminating a contract. Provides for the termination of a contract by a supplier without notice under certain circumstances. Prohibits certain practices by suppliers. Provides procedures for resolving warranty claims. Provides procedures for continuing or creating contracts on the death of a retailer. Provides civil penalties for violations.

Effective: July 1, 2004.

Nugent, Lanane

January 12, 2004, read first time and referred to Committee on Agriculture and Small Business.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 383

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 15-7-7-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) This chapter applies to the
3 following:

4 (1) Contracts that may be terminated or altered at will. ~~and~~

5 (2) Contracts formed or renewed after June 30, 1989.

6 **(3) Retail agreements that are continuing contracts with no**
7 **expiration date.**

8 (b) This chapter shall not be construed to impair the obligation of a
9 contract in violation of Article 1, Section 24 of the Constitution of the
10 State of Indiana.

11 **(c) A contractual term restricting a procedural or substantive**
12 **right of a retailer under this chapter, including a choice of law or**
13 **choice of forum clause, is void.**

14 **(d) The provisions of this chapter cannot be waived in a**
15 **contract, and an attempted waiver is void.**

16 SECTION 2. IC 15-7-7-2.5 IS ADDED TO THE INDIANA CODE
17 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2004]: **Sec. 2.5. As used in this chapter, "contract" means a written or an oral contract between a supplier and a retailer under which:**

(1) the retailer agrees to:

(A) sell; and

(B) maintain an inventory of;

the supplier's products; and

(2) the supplier agrees to supply inventory to the retailer.

SECTION 3. IC 15-7-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. As used in this chapter, "current net price" means the price ~~listed by a wholesaler, manufacturer, or distributor of inventory of an inventory item recorded in a price list or catalogue used by a supplier that is~~ in effect at the time a contract is terminated, less an applicable trade or cash discount.

SECTION 4. IC 15-7-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) As used in this chapter, "farm, ~~or industrial, machinery~~ **and outdoor power equipment**" means:

(1) farm implements;

(2) tractors;

(3) farm machinery;

(4) utility and industrial equipment;

(5) construction machinery, including track and wheel tractors, motor graders, and excavators; or

(6) internal combustion or electrically powered equipment designed for:

(1) horticultural;

(2) floricultural;

(3) landscaping; or

(4) turf maintenance;

use.

(b) The term includes attachments ~~or~~ and repair parts for one (1) or more machines referred to in subdivisions (1) through (5): an item described in subsection (a).

~~(b) As used in this chapter, "farm or industrial machinery"~~ **(c) The term does not include all terrain vehicles.**

SECTION 5. IC 15-7-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. As used in this chapter, "inventory" means farm, ~~or industrial machinery~~ **industrial, and outdoor power equipment** held by a retailer.

SECTION 6. IC 15-7-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. As used in this chapter, "net

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cost" means the price a retailer paid to a ~~wholesaler, manufacturer, or distributor~~ **supplier** for inventory, minus any discounts, retainage, and prepaid freight or return freight.

SECTION 7. IC 15-7-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) As used in this chapter, "retailer" means a person engaged in the business of selling **inventory** at retail. ~~farm or industrial machinery.~~

(b) The term ~~does not include a retail seller of:~~

- (1) petroleum products, if the sale of petroleum products is the primary purpose of the retail seller's business;
- (2) motor vehicles (as defined in IC 9-13-2-105(a)); or
- (3) automotive care and replacement products.

includes an heir, a personal representative, a guardian, or a receiver of a person described in subsection (a).

(c) The term ~~includes the heirs, personal representative, guardian, or receiver of a retailer.~~ **does not include a person who is primarily engaged in the business of selling at retail:**

- (1) petroleum products;
- (2) motor vehicles (as defined in IC 9-13-2-105(a)); or
- (3) automotive care and replacement products.

SECTION 8. IC 15-7-7-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.5. As used in this chapter, "superseded repair part" means a part that:

- (1) is designed for use in repairing farm, industrial, and outdoor power equipment;
- (2) was purchased by a retailer from a supplier;
- (3) is no longer sold by the supplier on the date the contract between the supplier and the retailer is terminated; and
- (4) provides the same function as a part sold by the supplier on the date a contract between the supplier and the retailer is terminated.

SECTION 9. IC 15-7-7-9.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.6. As used in this chapter "supplier" means:

- (1) a manufacturer, wholesaler, or distributor that sells inventory to a retailer;
- (2) a:
 - (A) purchaser of the assets;
 - (B) purchaser of the stock of a surviving corporation that results from a merger or liquidation;
 - (C) receiver; or

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- 1 **(D) trustee;**
 2 **of a person described in subdivision (1); or**
 3 **(3) the assignee of a person described in subdivision (1).**

4 SECTION 10. IC 15-7-7-10 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) Upon the
 6 termination of a ~~written or unwritten~~ contract between a retailer and a
 7 ~~wholesaler, manufacturer, or distributor of farm, or industrial~~
 8 ~~machinery under which the retailer had agreed to maintain an~~
 9 ~~inventory, supplier, the wholesaler, manufacturer, or distributor~~
 10 **supplier** shall repurchase the inventory of the retailer under section 11
 11 of this chapter.

12 (b) If the retailer has an outstanding debt to the ~~wholesaler,~~
 13 ~~manufacturer, or distributor, supplier,~~ the amount to be paid in
 14 repurchase of the inventory may be credited to the retailer's account.

15 (c) The requirement under subsection (a) that a ~~wholesaler,~~
 16 ~~manufacturer, or distributor~~ **supplier** repurchase inventory does not
 17 apply when a contract is terminated based upon:

- 18 (1) the conviction of the retailer (or a principal owner or operator
 19 of the retailer) of an offense involving theft, dishonesty, or false
 20 statement; or
 21 (2) a fraudulent misrepresentation by the retailer to the
 22 ~~wholesaler, manufacturer, or distributor~~ **supplier** that is material
 23 to the contract.

24 SECTION 11. IC 15-7-7-11 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Except as
 26 provided in section 14 of this chapter, **if a contract is terminated** a
 27 ~~wholesaler, manufacturer, or distributor~~ **supplier** shall repurchase the
 28 ~~farm, or industrial machinery inventory~~ that:

- 29 (1) the retailer previously purchased from the ~~wholesaler,~~
 30 ~~manufacturer, or distributor, supplier;~~ and
 31 (2) the retailer held as inventory on the date of the termination of
 32 the contract.

33 (b) For the purposes of subsection (a)(1), proof of purchase from the
 34 supplier may include retail invoices from the supplier or a reference to
 35 an item in a current or past supplier price book.

36 SECTION 12. IC 15-7-7-12 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) The price for a
 38 repurchase **under section 11 of this chapter** must equal **the sum of**
 39 **the following:**

- 40 (1) One hundred percent (100%) of the net cost of ~~all~~ new,
 41 unsold, undamaged, and complete ~~farm, or industrial machinery~~
 42 **inventory** (except repair parts and inventory described in

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subdivisions (2) through (6)).

(2) One hundred percent (100%) of the current net price of ~~all~~ new, unused, and undamaged **superseded** repair parts.

(3) **An additional five percent (5%) of the current net price of new, unused, and undamaged:**

(A) repair parts; and

(B) superseded repair parts;

unless the supplier performs the packing and loading of the repurchased parts.

(4) For specific data processing hardware or software and telecommunications equipment the supplier required the retailer to purchase during the five (5) years before the date the contract between the supplier and the retailer is terminated, the value determined under section 12.5 of this chapter.

(5) For specialized repair tools that the contract requires the retailer to purchase:

(A) seventy-five percent (75%) of the current net price of tools purchased less than four (4) years before the date the contract is terminated; and

(B) fifty percent (50%) of the current net price of tools purchased at least four (4) and less than seven (7) years before the date the contract is terminated.

To qualify for a repurchase price under this subdivision, a specialized repair tool must be unique to a supplier's product line and in complete and resalable condition.

(6) For inventory used by a retailer in demonstrations, including inventory leased primarily for demonstrations, the depreciated value described in the contract. If the depreciated value is not described in the contract, the repurchase price is determined under section 12.5 of this chapter. To qualify for a repurchase price under this subdivision, the inventory must be in new condition.

(b) A ~~wholesaler, manufacturer, or distributor~~ **supplier** that is required to repurchase ~~farm, or industrial machinery~~ **inventory** from a retailer under this chapter shall pay freight charges incurred in shipping the ~~farm, or industrial machinery (except repair parts)~~ **inventory** back to the ~~wholesaler, manufacturer, or distributor.~~ **However, the retailer:**

(1) shall pay freight charges incurred in shipping repair parts that are repurchased under this chapter back to the ~~wholesaler, manufacturer, or distributor; and~~

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(2) is responsible for the packaging of all farm or industrial machinery that is repurchased from the retailer under this chapter in preparation for the shipment of that farm or industrial machinery back to the wholesaler, manufacturer, or distributor.

supplier.

SECTION 13. IC 15-7-7-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 12.5. The repurchase price that a retailer is entitled to under section 12(a)(4) or 12(a)(6) of this chapter is determined in STEP FOUR of the following formula:**

STEP ONE: Divide the purchase price by sixty (60).

STEP TWO: Determine the number of calendar months that exist between the month of the repurchase and the month in which the hardware, software, or equipment was purchased.

STEP THREE: Subtract the number determined in STEP TWO from sixty (60).

STEP FOUR: Multiply the quotient determined under STEP ONE by the remainder determined under STEP THREE.

SECTION 14. IC 15-7-7-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 13. (a) Upon the payment to the retailer of the repurchase price under section 12 of this chapter, the title and right of possession to the inventory passes to the wholesaler, manufacturer, or distributor supplier.**

(b) Inventory repurchased by a supplier under this chapter may be sold to decrease a retailer's reserve account for a recourse contract, a retail sale contract, or a lease contract held by the supplier if:

(1) notice of the proposed sale of the repurchased inventory is provided to the retailer at least seven (7) business days before the sale; and

(2) the retailer is given the option to purchase the repurchased inventory not more than seven (7) business days after the date the notice described in subdivision (1) was received by the retailer.

(c) The supplier shall return to a retailer reserve account funds in direct proportion to the outstanding liability as a recourse contract is reduced.

(d) The supplier shall provide a report to a retailer detailing the status of outstanding recourse contracts at the end of each calendar quarter.

SECTION 15. IC 15-7-7-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 14. This chapter does**

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not require the repurchase of any of the following:

(1) A repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, batteries, solvents, or lubricants.

(2) A single repair part that is priced as a set of two (2) or more items.

(3) Inventory for which the retailer is unable to furnish evidence, satisfactory to the ~~wholesaler, manufacturer, or distributor,~~ **supplier** of clear title, free and clear of all claims, liens, and encumbrances.

(4) Inventory that the retailer desires to keep, provided the retailer has a contractual right to keep the inventory.

(5) Inventory that is not in a new, unused, and undamaged condition.

(6) Inventory that was ordered by the retailer on or after the date of notification of termination of the contract.

(7) Inventory that was acquired by the retailer from a source other than the ~~wholesaler, manufacturer, or distributor,~~ **supplier.**

(8) Complete ~~farm, and industrial machinery,~~ **inventory items,** except repair parts, that were purchased thirty-six (36) months or more before the date of termination.

(9) A repair part that is in a broken or damaged package, if that package is necessary for the resale of the repair part to a customer by a retailer.

SECTION 16. IC 15-7-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. A ~~wholesaler, manufacturer, or distributor~~ **supplier** that ~~fails or refuses to~~ **does not** repurchase inventory as required under this chapter within ninety (90) days after the termination of the contract is liable in a civil action to the retailer for:

(1) one hundred percent (100%) of the current net price of repair parts;

(2) one hundred percent (100%) of the net cost of all other inventory;

(3) the retailer's reasonable attorney's fees;

(4) court costs; and

(5) interest on the amounts determined under subdivisions (1) through (2), computed at a simple interest rate that is set by the court at no less than six percent (6%) per year and no more than ten percent (10%) per year, and beginning to accrue on the sixty-first day after the termination of the contract.

SECTION 17. IC 15-7-7-16 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Upon:

(1) the death or incapacitation of:

(A) a retailer;

(B) the majority shareholder of a retailer; or

(C) the controlling partner of a retailer; or if the retailer is a corporation;

(2) the insolvency of the retailer **if the retailer is a corporation;** the retailer's heirs, personal representative, guardian, or receiver, or trustee of a person described in subdivision (1) may compel a wholesaler, manufacturer, or distributor **supplier** to repurchase the retailer's inventory under this chapter as if the retailer's contract had terminated.

(b) The retailer's heirs, personal representative, guardian, or receiver, or trustee must exercise the right provided by this section within ~~one hundred eighty (180)~~ **three hundred sixty-five (365)** days after the retailer's death, incapacitation, or insolvency.

(c) ~~However,~~ This section does not require the repurchase of inventory if the heirs, personal representative, guardian, or receiver, or trustee enters into a new contract with the wholesaler, manufacturer, or distributor **supplier**.

SECTION 18. IC 15-7-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. (a) A retailer wholesaler, manufacturer, or distributor **or supplier** may, in person or through a representative, inspect all inventory and certify its acceptability when it is packed for shipment to the wholesaler, manufacturer, or distributor **supplier** under a repurchase under this chapter.

(b) **A supplier is considered to have accepted all repurchased inventory if the supplier does not perform the inspection and certification described in subsection (a) less than sixty (60) days after the date the contract between the supplier and the retailer is terminated.**

SECTION 19. IC 15-7-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) This chapter does not affect a security interest that the wholesaler, manufacturer, or distributor **may have a supplier has** in a retailer's inventory.

(b) IC 26-1-6.1 does not apply to a repurchase of inventory under this chapter.

SECTION 20. IC 15-7-7-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) **Except as provided in subsection (b), not less than ninety (90) days before a supplier terminates a contract with**

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a retailer, the supplier must provide a retailer with written notice that:

- (1) states the supplier's intent to terminate the contract;
- (2) specifies deficiencies giving rise to the termination; and
- (3) sets a date at least sixty (60) days after the date of delivery of the notice establishing a period for the retailer to cure all deficiencies described in subdivision (2).

If the retailer cures all deficiencies before the date set under subdivision (3), the notice is void.

(b) Except as provided in subsection (c), a supplier may terminate a contract without notice if one (1) of the following conditions exists:

- (1) The retailer does not comply with a contractual requirement, if the requirement is not different from a requirement imposed on other retailers similarly situated in Indiana.

- (2) The retailer conducts a closeout sale on a substantial part of the retailer's inventory supplied by a supplier.

- (3) Dissolution or liquidation proceeding begins with respect to the retailer.

- (4) The retailer:

- (A) changes the retailer's principal place of business; or

- (B) adds additional locations;

without the prior approval of the supplier.

- (5) The retailer substantially defaults under a:

- (A) chattel mortgage; or

- (B) other security agreement;

between the retailer and the supplier.

- (6) A guarantee of a present or future obligation of the retailer to the supplier is revoked or discontinued.

- (7) The retailer:

- (A) fails to operate in the normal course of business for seven (7) consecutive days; or

- (B) otherwise abandons;

the farm, industrial, and outdoor power equipment business.

- (8) The retailer:

- (A) pleads guilty to; or

- (B) is convicted of;

a felony that affects the relationship between the retailer and the supplier.

- (9) The retailer transfers an interest in the farm, industrial, and outdoor power equipment business to another person.

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(10) A person with a substantial interest in the ownership or control of the retailer:

(A) dies;

(B) substantially reduces the person's interest in the ownership or control of the retailer; or

(C) withdraws from the ownership or control of the retailer.

(c) A supplier may not terminate a contract between a supplier and a retailer without notice under subdivision (b) if the supplier consents to a person's action described in subsection (b).

SECTION 21. IC 15-7-7.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 7.5. Farm, Industrial, and Outdoor Power Equipment Retailers

Sec. 1. The definitions in IC 15-7-7 apply throughout this chapter.

Sec. 2. A supplier may not do the following:

(1) Coerce a retailer to accept delivery of inventory that the retailer did not voluntarily order. This subdivision does not apply if the supplier is required by law to supply the inventory to the public.

(2) Condition a sale of inventory to a retailer on a requirement that the retailer purchase other goods or services, except that a supplier may require a retailer to purchase inventory reasonably necessary to maintain the quality of service required by the terms of a contract.

(3) Coerce a retailer into refusing to purchase inventory manufactured by another supplier.

(4) Terminate a contract based on the results of a natural disaster.

Sec. 3. (a) As used in this section, "claim" refers to a retailer's claim for reimbursement from a supplier for labor and materials expended by the retailer to do a repair or replacement required under the supplier's warranty agreement with a consumer of the supplier's products.

(b) Before submitting a claim to a supplier, the retailer shall inform the supplier of the retailer's established customer hourly retail labor rate. A supplier is not required to process a claim if the retailer has not complied with this subsection.

(c) If a retailer submits a claim to a supplier after termination of a contract for warranty work performed before the effective

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1 date of the termination, the supplier shall approve or disapprove
2 the claim as provided in subsection (d).

3 (d) A supplier shall approve or disapprove a claim not more
4 than thirty (30) days after the date of receipt of the claim by the
5 supplier. If a supplier does not approve or disapprove a claim as
6 provided in this subsection, the claim is considered to be approved
7 thirty (30) days after the date of receipt of the claim by the supplier
8 and the retailer shall be paid by the supplier as provided in
9 subsection (e).

10 (e) A supplier shall pay an approved claim not more than thirty
11 (30) after the date of the approval.

12 (f) A supplier shall pay to the retailer:

13 (1) the retailer's total labor cost, calculated by multiplying the
14 retailer's established customer hourly retail labor rate
15 described in subsection (b) by the reasonable and customary
16 amount of time required to complete the work expressed in
17 hours and fractions of hours; plus

18 (2) the retailer's total cost for parts, calculated by adding the
19 retailer's net price for parts used, plus fifteen percent (15%)
20 of the retailer's net price. The percentage added is to
21 reimburse the retailer for reasonable costs of doing business
22 in performing warranty service on the supplier's behalf,
23 including freight and handling costs incurred.

24 (g) The supplier is not required to pay a retailer for parts or
25 work that is expressly excluded under the supplier's warranty to
26 the consumer.

27 (h) The supplier shall provide notice to the retailer when the
28 supplier disapproves a claim:

29 (1) not more than (30) days after the date the claim is
30 disapproved; and

31 (2) specifying the reasons for the disapproval.

32 (i) The supplier may adjust for:

33 (1) calculation errors; and

34 (2) claims paid in error.

35 (j) If the manufacturer's terms and conditions are more
36 favorable to a retailer, the retailer may accept the manufacturer's
37 reimbursement terms and conditions instead of the provisions of
38 this section.

39 Sec. 4. (a) As used in this section "heir" means an heir (as
40 defined by IC 29-1-1-3) of a deceased:

41 (1) retailer; or

42 (2) principal shareholder or partner of a retailer.

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1 (b) Upon the death of a person described in subsection (a), a
 2 person may not operate as a retailer in violation of this section.

3 (c) An heir, a personal representative, a guardian, or a receiver
 4 may:

5 (1) conduct business under the terms of a contract with the
 6 written consent of the supplier; and

7 (2) make a written offer to enter into a new contract with a
 8 supplier to operate as a retailer not more than ninety (90)
 9 days after the death of a person described in subsection (a).

10 (d) If an heir, a personal representative, a guardian, or a
 11 receiver makes an offer described in subsection (c)(2), the supplier
 12 shall accept or decline the offer not more than ninety (90) days
 13 after receipt of the offer.

14 (e) If the supplier declines an offer described in subsection (c),
 15 the supplier shall provide the heir, personal representative,
 16 guardian, or receiver with a written notice of the supplier's
 17 decision and the reasons why the supplier declined.

18 (f) Notwithstanding the other provisions of this section, if a valid
 19 agreement establishing a procedure for determining the successor
 20 of a person described in subsection (a) exists between a supplier
 21 and a retailer on the date of the death of the person described in
 22 subsection (a), the agreement determines the successor.

23 Sec. 5. (a) A supplier that violates this article is liable to the
 24 retailer for the following:

25 (1) Actual damages.

26 (2) Costs and reasonable attorney's fees.

27 (b) A retailer may be granted injunctive, declaratory, and other
 28 equitable relief as the court determines appropriate in an action to
 29 enforce compliance with this chapter.

30 SECTION 22. [EFFECTIVE JULY 1, 2004] (a) As used in this
 31 SECTION, "contract" has the meaning set forth in IC 15-7-7-2.5
 32 as added by this act.

33 (b) Notwithstanding IC 15-7-7-1(a)(2), IC 15-7-7, as amended by
 34 this act, and IC 15-7-7.5, as added by this act, apply only to
 35 contracts entered into, amended, or renewed after June 30, 2004.

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